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Report of the Commission on International Investment and Transnational Corporations on its twenty-first session

held at the Palais des Nations, Geneva,
from 24 to 28 April 1995

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CONTENTS

Chapter		Paragraphs
	Introduction	1 - 11
I.	Recent developments in international investment and transnational corporations; country and regional experiences in attracting foreign direct investment for development (agenda items 3 and 4)	12 - 61
II.	Implementation of the programme on international investment and transnational corporations (agenda item 5)	62 - 85
III.	Proceedings of the closing plenary	86 - 89
IV.	Organizational matters	90 - 96

Annexes

I. Agreed conclusions

II. Summaries of informal panel presentations

III. Provisional agenda for the twenty-second session of the Commission

IV. Attendance

INTRODUCTION

1. The Commission on International Investment and Transnational Corporations held its twenty-first session at the Palais des Nations, Geneva, from 24 to 28 April 1995. In the course of its session, it held six formal sessions and six informal sessions.

Introductory statements

2. The **Chairperson** said that the globalization of markets and industry, which was expected to intensify as a result of the Uruguay Round, had brought in a new paradigm where the political frontiers of a country did not coincide with its economic borders. The private business sector was gaining strength, the clamour for private investment, particularly foreign direct investment, was growing, and States were having to compete with one another to attract it.

3. Transnational corporations were introducing integrated international production and marketing strategies. While production still took place in specific locations, the activities of transnational corporations were linked strategically, and TNCs would have to achieve the right balance between a global approach and local capabilities and sensitivities. For their part, host countries must provide the necessary infrastructure and a stable legislative and political environment.

4. The last 30 years had been filled with exciting changes in attitudes towards FDI and in FDI flows themselves, but new international measures might be necessary in respect of the nationality of TNCs, taxation and treatment of foreign investments. Attempts to harmonize rules on investment had failed in the past, and most domestic laws did not differentiate between a TNC and other companies involving foreign individual investment. It was to be hoped that these issues would be addressed and that TNCs would find their rightful niche in the legal firmament and the world economy.

5. The **Officer-in-charge of UNCTAD** said that the theme of the forthcoming UNCTAD IX would be promoting growth and sustainable development in a globalizing and liberalizing world economy, and a key topic of consideration related to promoting enterprise development and competitiveness in developing countries and economies in transition.

6. Within today's globalized world economy, characterized by increased interplay between investment, trade, technology and services, member States placed increased emphasis on the contribution that transnational corporations could make to growth and development. There had been a marked shift towards greater openness of national economies to inward foreign investment and the activities of transnational corporations. This had been particularly dramatic in the economies in transition, but it was also evident in developing countries. Underlying this policy shift was the recognition that TNCs could make important contributions to development. By mobilizing resources globally and allocating them to productive activities, facilitating the upgrading of the created assets a country possessed, and stimulating local business development, TNCs could help developing countries penetrate international markets. At the same time, TNCs were responding positively to the new

conditions in the developing regions. The benefits of country, product and process specialization were not only visible in manufacturing but were beginning to involve the services sector as well.

7. However, while direct foreign investment in developing countries was growing by about 20 per cent annually, much of it went to only a dozen countries. Moreover, the more advanced elements of international production were confined to developed countries and a small number of developing countries in selected industries, thus limiting the broader developmental impact of internationalization.

8. Thus, domestic policy reforms needed to go beyond liberalization and embrace pro-active approaches related to enterprise development and technological capability-building. An educated and skilled workforce and adequate infrastructures were essential in attracting foreign investment. Country experiences suggested a number of market-friendly developmental measures that countries could take, with appropriate international support. There was a need to synthesize these measures in a new, pro-active international consensus on foreign investment and enterprise development. One measure that countries should be cautioned against, however, was the introduction of specific investment incentives.

9. An important aspect of international support in the area of foreign investment was technical cooperation, and two new programmes relating to entrepreneurship and enterprise development and to the commercialization of science and technology had been developed within UNCTAD. By integrating such supply-side elements into the traditional investment advisory services, the technical assistance provided by UNCTAD sought to go beyond policy advice, and to build national capacities and institutions to expand and support the enterprise sector.

10. Today, there was a shared perception among countries that development-oriented business was an essential partner in the development process. In line with this understanding, a parallel meeting of heads of national investment agencies had been organized by UNCTAD, at which they could share experiences in attracting foreign investment, develop ties for follow-up information exchange and managerial interchange among their respective agencies, and also network with business and international organizations.

11. Finally, he expressed his appreciation to those member States that had made voluntary contributions to the Trust Fund on Transnational Corporations in 1994.

Chapter I

RECENT DEVELOPMENTS IN INTERNATIONAL INVESTMENT AND TRANSNATIONAL CORPORATIONS

COUNTRY AND REGIONAL EXPERIENCES IN ATTRACTING FOREIGN DIRECT INVESTMENT FOR DEVELOPMENT

(Agenda items 3 and 4)

12. For its consideration of these items, the Commission had before it the following documentation:

"Trends in foreign direct investment: report by the UNCTAD secretariat" (TD/B/ITNC/2);

"Foreign direct investment in developing countries: report by the UNCTAD secretariat" (TD/B/ITNC/3);

"Incentives and foreign direct investment" (background document) (TD/B/ITNC/Misc.1);

"Foreign direct investment in Central and Eastern Europe" (background document) (TD/B/ITNC/Misc.2).

A. General statements

13. The Chief of the Research and Policy Analysis Branch of the Division on Transnational Corporations and Investment stated that annual foreign direct investment outflows in 1994 had reached $204 billion, increasing by 6 per cent annually since the last year of the FDI recession in 1992. Between 1992 and 1994, investment inflows had increased by an average of 25 per cent annually in developing countries, compared with 8 per cent annually in the developed countries. Developing countries now accounted for some two fifths of global inflows, and about half of such flows if intra-European Union flows were excluded.

14. Significant regional differences characterized recent FDI patterns. Asia and the Pacific had been the most successful in attracting FDI, accounting for almost 70 per cent of total estimated FDI flows to developing countries in 1994. Latin America and the Caribbean had constituted the second most important developing host region for TNCs in 1994, with estimated inflows of $22 billion, or 27 per cent of total inflows to developing countries. Africa had received less than 5 per cent of flows to developing regions in 1994. However, above-average levels of profitability and a strong earnings performance suggested that Africa had the potential, as yet unrealized, to become a more attractive location for FDI. The significantly increased activity of TNCs in Central and Eastern Europe in the 1990s had not given rise to any significant investment diversion away from developing countries.

15. Not only were developing countries significant recipients of foreign direct investment, they were also increasingly important sources of such

investment, primarily for other developing countries in the same region. In 1993, transnational corporations based in developing countries had invested a record amount of $12 billion abroad.

16. The growth of foreign direct investment from developing countries was part and parcel of the broader process of the internationalization of economic activities, a process that increasingly placed the efficient conversion of inputs into outputs in a global framework of integrated international production systems (as examined in World Investment Reports 1993 and 1994). In organizing production and serving markets internationally, firms used an increasing number of modalities, including arm's-length trade, foreign direct investment, subcontracting, alliances, licensing, franchising and other non-equity forms of international participation.

17. Two implications of the emergence of integrated international production were particularly noteworthy: an increasing share of international transactions associated with the modalities used by firms were organized and structured by TNCs in the pursuit of global strategies, i.e. they took place under the common governance of transnational corporations and no longer through arm's-length trade; and TNCs used the various modalities of international transactions not only to serve markets but also to organize production, i.e. to obtain access to the tangible and intangible assets required to convert inputs into outputs.

18. These developments in the international economy had profound policy implications: the issue was not only access to markets but access to markets and assets. Separate trade regimes and even separate FDI regimes were only partial answers to the dynamics of a liberalizing and globalizing world economy. They were building blocks for what, eventually, was really at stake, namely the challenge of creating an enabling framework for international production in which it made little if any sense to distinguish between national and transnational corporations. Much more analysis and understanding of transnational corporations and the international investments they undertook was needed, since these constituted the driving force behind the current trend away from national production systems towards one integrated international production system.

19. The representative of **France**, speaking on behalf of the **European Union** welcomed the first session of the Commission on International Investment and Transnational Corporations in its new role as a subsidiary body of the Trade and Development Board and said that the decision of the General Assembly to transfer the programmes on transnational corporations and science and technology from New York to Geneva enriched UNCTAD's potential and gave new visibility to its work. It would be highly desirable for the Commission to develop collaboration with other organizations dealing with the same areas of work in order to avoid overlap and enhance the preparatory work for UNCTAD IX. He also welcomed the involvement in the work of the Commission of non-governmental actors - business, research and academic bodies - and its opening to the participation of all countries. As a result of all these developments, the Commission could serve as a forum for more in-depth analysis and discussion of the activities of transnational corporations (TNCs) within the globalizing world economy. Special attention in this work should be given to countries newly opened to foreign direct investment (FDI).

20. The Commission was the proper forum in which to discuss the highly acclaimed World Investment Report. All steps should therefore be taken to include the Report in the agenda of the next session of the Commission and to make it available in all official languages. The Report should also be disseminated to other intergovernmental bodies and the business world. Given the importance of reliable statistics on FDI as a basis for decision-making and informed dialogue among institutions dealing with FDI, special support should be given to the continuation of the secretariat's work on World Investment Directories, four of which had already been published on particular regions. The work on the subsequent volume on Africa should be completed, and the secretariat was encouraged to find donors to ensure funding.

21. The representative of **Japan** emphasized the need to work out a new strategy for development in a globalized and liberalized world, in which all countries increasingly interacted with one another and affected each other. The new strategy should be based on a comprehensive approach, involving all countries, including least developed countries, and reinvigorating economic assistance by merging all components of development assistance. In that connection, and with regard to ODA, in spite of the decline in most donors' ODA in 1993, Japan had managed to increase its ODA. In a new strategy of the type described, it would be important to undertake efforts to generate domestic resources in developing countries, as well as to rely increasingly on private capital inflows, which had indeed been increasing, although not all developing countries had yet managed to benefit from them. Japan also supported economic cooperation among developing countries, including assistance from economically successful developing countries to developing countries in danger of being marginalized in the world economy.

22. In the context of FDI flows to developing countries it was vital to recognize the role that small and medium-size TNCs could play in this respect. To that end, the Government of Japan had supported the UNCTAD secretariat's work in this area, and the result had been, inter alia, a seminar in Osaka which had adopted a widely disseminated Osaka Declaration on SMEs. Additional funds were earmarked for this work in 1995 to deal with the issue of how marginalized developing countries could attract small and medium-size TNCs, including TNCs from developing countries. In general, the Commission on International Investment and TNCs should, within its new mandate, take part in the conceptualization of a new development strategy, especially as it related to FDI, in order to vigorously promote FDI, including in particular FDI in developing countries.

23. The representative of **Germany** welcomed the decision to make the Commission part of the intergovernmental machinery of UNCTAD, as well as the evolution in the thinking of the Commission, supported by thorough analysis by the UNCTAD secretariat, towards recognizing the importance of FDI and TNCs for growth, competitiveness, economic adjustment, technology transfer, etc. He also agreed with the analysis in the documents prepared for the Commission (TD/B/ITNC/2 and TD/B/ITNC/3) in which it was emphasized that while TNCs contributed to the stability and prosperity of countries and gave rise to structural change, they themselves were subject to continuous pressure to adjust and reform. The Commission, too, by changing its name, had adjusted to an increasingly globalized environment, thus taking the first step in the right direction. The second step, to be undertaken in the future, should be evolution towards extending its work to issues of enterprise development and

business investment promotion. The Commission could contribute to competent and practical consideration of these issues at UNCTAD IX. Finally, while he agreed with most of the statistical analysis contained in the reports prepared by the secretariat, he nevertheless cautioned against drawing from this analysis exaggerated conclusions concerning the dominance of the world economy by TNCs.

24. The representative of **China** agreed with the analysis contained in the documents prepared by the secretariat that international investment had a positive impact on the sustainable growth of the world economy. He stressed that, in view of the prospect of recovery in the developed countries and the leading position that these countries occupied in the field of international investment, developed countries had both the duty and the capacity to make the efforts necessary to maintain and further the continued growth of international direct investments. The developed countries should therefore intensify their efforts to increase FDI to all developing countries and especially to Africa. TNCs for their part, while expanding in developing countries, should not only look at short-term benefits but also take into account the long-term economic development strategies of the host developing countries, increasing the quality of FDI by, for example, intensifying new-tech and high-tech transfers. China was a country which had benefited greatly from FDI in the past. In the future, while continuing to reform its economic institutions, it would need even more support from FDI, and it was therefore undertaking further efforts to improve the FDI climate.

25. The representative of **Mexico** noted the importance of the current session of the Commission in its new role as a subsidiary body of the Trade and Development Board stressing that at the present stage the Commission should integrate with the other UNCTAD bodies, thereby permitting better use of resources and experience. In that connection, it would be useful for the UNCTAD secretariat to make efforts to familiarize delegations in Geneva with its work. Concerning the report TD/B/ITNC/2, he agreed that FDI was an important source of resources for development, because it complemented domestic savings. That was why Mexico had pursued the policy of attracting FDI flows by, inter alia, ensuring a favourable legal environment for FDI to facilitate such investment. As a result, FDI flows had expanded, reaching $8.1 billion in 1994. Preliminary data for 1995 tended to prove the secretariat's assumption that FDI flows would not be substantially affected by volatile flows of short-term portfolio capital, indicating the long-term considerations of foreign direct investors in the Mexican economy.

26. The representative of **Switzerland** noted the reorientation of the Commission's mandate and activities towards work on globalization, trade and international production; this was a positive development for both UNCTAD and the Commission, showing that UNCTAD was adjusting to the challenges of today. In this context, he praised the World Investment Report 1994 as an excellent example of UNCTAD's analytical capabilities and suggested that future Reports should be put on the agenda of the Trade and Development Board to enrich its discussions. He welcomed the involvement of private-sector and investment bodies in the work of the Commission.

27. While noting the increased flows of FDI, he expressed concern about their unequal distribution to developing countries, with 83 per cent of flows going to only 10 countries and 0.7 per cent going to 48 least developed countries.

He agreed that one way to correct this imbalance was to intensify privatization programmes. In addition, however, it was also important to mobilize savings for internal investment, since that would then attract international investment. The potential of small and medium-size enterprises (SMEs) to undertake investment should not be overlooked. Since they were often more flexible and innovative than large firms, SMEs created jobs, thus reducing the social cost of structural adjustment to the global economy.

28. The representative of the **United States of America** welcomed the first session of the new Commission on International Investment and Transnational Corporations and the first as a subsidiary body of UNCTAD. He also welcomed the background papers on investment incentives and regional experiences, and he seconded the proposal made by the European Union and Switzerland to include World Investment Reports in future Commission agendas. With regard to the reports on regional experiences, he agreed with the assessment concerning the importance of South Africa as a host country and a source of FDI for other African countries and as a potential engine of growth for the region. While sharing the secretariat's analysis of privatization in Africa and Latin America, he cautioned against overlooking direct and indirect benefits from the participation of TNCs in privatization in Central and Eastern Europe which included, inter alia, infusion of capital, technology and management experience, as well as creation and preservation of jobs. On FDI in Africa, as a result of suggestions made by a number of United States firms, the United States Government was undertaking actions to help firms' trade and investment opportunities in Africa.

29. The representative of **France**, referring to the report on trends in FDI (TD/B/ITNC/2), said that he wished to emphasize three points. Firstly, the work on recent trends should be presented at the beginning of each year and should include an analysis of the trends in developing countries during the first three quarters of the preceding year concerning not only FDI but also domestic investment, including its material and other components. Secondly, more attention should be paid to analytical work on the activities of TNCs in developing countries, especially in the services sector, and more work should be done on TNCs from developing countries. Thirdly, within work on access to markets, the issue of open and equitable competition between foreign and domestic firms should be addressed. Attention should also be paid to intercompany agreements in developing countries, including agreements among domestic firms and between domestic and foreign companies.

30. The representative of the **European Community** informed the Commission that the European Union, concerned that the European economic presence in Asia in general and in FDI in particular was lagging behind that of other home countries, intended to undertake a study of this issue. To avoid duplication of work and waste of resources, the European Community would be seeking the cooperation of UNCTAD in the preparation of the study.

31. The representative of **Pakistan**, after agreeing with the thrust of the analysis contained in the report on trends in FDI (TD/B/ITNC/2), focused on the need to work out a framework for multilateral rules on FDI. Neither the existing bilateral investment treaties nor the negotiations within OECD, which reflected the interests of a limited number of countries, could satisfy this need. The Commission should therefore request the secretariat to initiate work in this area. Such a framework could include as principal components a

global most-favoured-nation clause, national treatment, a dispute settlement mechanism, minimum criteria for transparency and rules of competitive behaviour.

32. The representative of **India** said that the World Investment Report 1994 was an excellent basis for policy formulation which was widely read in ministries and other institutions in his country, and he suggested that future World Investment Reports should be published in the first quarter of each year and discussed by the Trade and Development Board or the Commission. As international investment, including FDI, had become a major contributor to development, it should be carefully studied so that good advice could be given to developing countries on, inter alia, how to maximize its long-term benefits and avoid short-term volatility. In this context, he welcomed the generation of synergies in advisory services in the fields of investment and science and technology. On the other hand, it was discouraging to see that resources for analytical work in these areas had been greatly reduced at a time when the importance of FDI and TNC issues was clearly increasing. Still, with the new Division on Transnational Corporations and Investment, UNCTAD's ability to assist developing countries in dealing with interrelated issues of investment, trade, technology and development in an integrated fashion had been enhanced.

33. The Indian economy had responded well to the programme of economic reform which had begun in 1991: the growth rate had increased, exports had expanded and the currency had remained stable after the introduction of convertibility. FDI flows had also grown, and the hope in India was that they would continue to grow in the future, as both India's absorption capacity and its available opportunities were immense.

34. The representative of **Colombia** supported the secretariat's analysis of recent trends in FDI as presented to the Commission, emphasizing that the concentration of FDI in the Triad members and a few developing countries gave cause for concern. She agreed that economic stability, not investment incentives, was the key determinant of FDI. As regards the future work of the Commission and the secretariat, two issues were of special importance: one was work on multilateral rules for a stabilizing FDI framework and the other was a study of the costs and benefits of investment incentives, including a possible policy regime for incentives. It was also important to continue technical assistance activities, which, in spite of reduced budgetary resources, should be possible owing to extrabudgetary contributions such as the recent contribution by Japan. The support of private and public companies for these activities should also be sought. TNCs, for their part, should establish minimal norms for the transfer of technology and know-how to their affiliates in developing countries, and they should organize training activities in those affiliates. As regards a possible multilateral FDI framework, the only acceptable way to try to achieve it was through negotiations in which all countries would participate. The extension of regional frameworks to third countries would not be an appropriate way to go.

35. The representative of the **Russian Federation**, welcoming the first session of the Commission as part of the intergovernmental machinery of UNCTAD, said that UNCTAD should coordinate its work in the area of FDI with other organizations, and especially with UNIDO, to avoid duplication. He also supported two proposals made by the European Union: firstly, to have future World Investment Reports translated into the official United Nations languages

and to include the discussion of the Reports in the agenda of the Commission; secondly, to give attention in analytical work to countries newly opened to FDI. His delegation also noted with great interest the background paper on incentives (TD/B/ITNC/Misc.1) and supported further work of the secretariat in this area. With regard to the analysis of trends in FDI contained in the documentation, he noted that the fast growth of FDI flows to developing countries showed that the fear that FDI would be diverted from these countries to the countries of Central and Eastern Europe was unfounded.

36. Concerning the economic situation in the Russian Federation, the objective of the country's economic policy was to achieve macroeconomic stabilization and resume economic growth. The FDI received so far ($1 billion in 1994) was still low by international standards, because a number of obstacles to increased FDI flows continued to persist, including inflation, debt, insufficient legal guarantees for foreign investors, etc. The Government was aware of these and other obstacles and was taking steps in many areas to establish a favourable investment climate, including better protection and incentives for FDI.

37. The representative of **Poland** said that, since the very beginning of his country's economic reforms, FDI had been expected to play an important role as a factor not only in development but also in the transformation of the country into a fully fledged market economy. The capital needs of Poland by far exceeded its domestic savings potential and would continue to do so in the foreseeable future. Poland therefore had to rely on foreign companies in this regard until higher domestic income could generate sufficient savings. So far, however, the inflow of FDI had been modest compared with needs: in the first quarter of 1995, the cumulated value of flows had amounted to $5 billion, with future commitments amounting to another $5 billion. This was not much in the context of Poland's ambitious plans to revamp the whole capital-intensive infrastructure, including highways, telecommunications, etc. Poland therefore realized that it would have to fight even harder to attract foreign capital. FDI was needed not only as a source of additional capital but also, and perhaps even more importantly, as a source of new technology, marketing and management skills, and access to foreign markets. In fact, TNCs had already helped the country to reintegrate the world market in industries such as electrical engineering and automobiles. On the other hand, FDI in the food and detergent industries was mainly domestic-market-oriented.

38. The representative of **Morocco**, referring to his country's experience with regard to attracting FDI, said that the economic restructuring and reforms initiated in the early 1980s had gradually brought an improvement in macroeconomic indicators relating to growth, inflation, internal and external debt, etc. Fiscal reform, financial liberalization and privatization had followed, making Morocco increasingly interesting to foreign investors. As a result, FDI inflows had also increased to an annual level of $500 million in the 1990s. Morocco's efforts to strengthen and reform the economy with the growing participation of foreign capital had thus proved positive and were continuing.

39. The unequal distribution of FDI flows to developing countries, including African countries, had many underlying reasons, but the key among them was poor infrastructure in the less developed countries and the continued inability to improve it because of financial constraints aggravated by

budgetary constraints and the external debt problem. With few exceptions, there was a clear link between high external debt and a low level of FDI in host developing countries. One of the reasons why many Asian countries were more successful in attracting FDI was that, in the absence of a debt burden, they were able to build better infrastructure. The key problem to be solved in countries receiving little FDI was thus to find financing to improve infrastructure.

40. The representative of the **United States of America**, referring to the issue of a multilateral framework for FDI, said that the OECD member countries had decided to open negotiations on their own investment agreement because they felt that there was a need for such an agreement. WTO would address the subject in the long term, if a review of the TRIMS agreement, planned within five years, concluded that multilateral negotiations within WTO were worthwhile. OECD had decided to open its Multilateral Investment Agreement, once concluded, to interested third countries that could meet the Agreement's obligations. He disagreed that membership of third countries in an agreement which they had not negotiated must be disadvantageous to those countries, because the principles concerning FDI within the frameworks which already existed or which would emerge in the future were by and large well known.

41. The representative of **Algeria** said that his country was about to start a structural adjustment programme agreed with IMF. The programme included measures aiming at macroeconomic stabilization and growth, including liberalization of trade and opening up to private and foreign investment. FDI had been assigned a central role in this programme as a source of capital from abroad needed to achieve the planned growth rates and as a source of improved management and access to markets. A new investment code had been introduced to this effect which included guarantees of profit transfer, and a new one-stop investment agency had been established to facilitate FDI. In the Algerian economy, in which the public sector predominated, enterprises were divided into three categories, and one of those categories included enterprises which could be privatized, including with participation of FDI. Special terms were also offered to foreign investors (including cheap infrastructure) to channel their activities to areas of importance such as the food and health industries.

42. The representative of **Consumers International** said that the growing importance of TNCs had been received with mixed feelings by consumers, because on the one hand TNCs brought widened choice for consumers, but on the other hand they also engaged in questionable activities where consumers were the losers. Her organization viewed the new mandate of the Commission as narrower than the preceding mandate and a cause for concern for consumers because of its focus on the establishment of an enabling environment for FDI while possibly neglecting such issues as the relationship between investment and competition and ethical behaviour of TNCs. She hoped that the terms of reference of the Commission could be renegotiated in the future to provide a more balanced mandate.

43. The representative of the **International Confederation of Free Trade Unions** stressed the importance of the contribution of the UNCTAD secretariat to a better understanding of the role of TNCs in the world economy and as a source of analysis of FDI trends. In his organization's view, the World Investment Report 1994 contained a very good and balanced analysis of labour

issues in the context of TNCs, as well as very useful work on corporate social responsibility which should be continued. He expressed concern that the revised mandate of the Commission, by focusing on an enabling environment for FDI, did not leave much room for dealing with policies aimed at minimizing the negative effects of FDI. In his view, the background paper on incentives took a narrow view of incentives, ignoring the fact that restricted labour rights served as a hidden incentive for investors. In that connection, the Commission should address the issue of labour standards and rights in the context of FDI and TNCs' activities, since while FDI had security and protection, labour frequently did not have them and was thus exposed to the danger of exploitation resulting from pressure of competition. There was a need for a comprehensive multinational framework for FDI, including minimum labour standards, and the Commission should play a leading role in this area.

44. The representative of the **Czech Republic** described to the Commission his country's experience with regard to establishing a favourable and stable investment climate. Conservative fiscal policies had been a major factor responsible for macroeconomic stability, the key ingredient of a good investment climate. The country's qualified but relatively cheap workforce had proved to be an important locational asset attracting foreign direct investors. As for foreign direct investment, the most common forms were now joint ventures and greenfield investments, as opposed to participation in the successful privatization process, which had reached its final stage. The country had taken many other steps in various areas to bring together the necessary ingredients for a good investment environment. The Czech Agency for Foreign Investment had been established to promote the Czech Republic as an attractive location for FDI. The Commercial Code gave foreign and domestic investors equal access to business life, Czech employment legislation was in line with that of the European Union and ILO practice, and foreign trade transactions of foreign investors were guided by international standards. Recently corporate tax had been reduced and steps towards full convertibility of the currency had been taken.

45. The representative of **Slovakia** said that his country needed FDI not only as a source of non-debt-creating capital, which was scarce in his country, but also as a source of technology, new jobs and new markets and, in general, as a major factor in the transformation of his country into a market economy. Since 1991, FDI flows had amounted to some $550 million, equivalent to $77 per capita. This was not much in relation to the country's expectations, its potential and the flows to neighbouring countries; for example, the Czech Republic had attracted FDI equivalent to $300 per capita. But FDI flows were increasing, and in 1994 had risen by 50 per cent. Slovakia did not apply any elaborate incentive schemes for foreign investors because the view prevailed that the most important thing was for the country to do everything to create favourable conditions by, for example, participating in agreements protecting investments *inter alia* against political risk. A major tool in helping to attract FDI through various forms of activities was the Slovak National Agency for Foreign Investment and Development.

46. The representative of **France**, speaking on behalf of the **European Union**, after recalling that, during the informal panel discussion on international frameworks for FDI, the representative of OECD had in an individual capacity indicated the OECD secretariat's approach to that issue, said that the open and constructive discussions of developing countries' experiences in

attracting FDI that were taking place in the Commission illustrated well post-Cartagena UNCTAD's capacity to make a major contribution to the analysis and conduct of national micro- and macroeconomic policies. The European Union believed that this approach should be continued, because it permitted many countries to benefit from other countries' positive experiences and because it facilitated the establishment of national frameworks conducive to FDI and to equitable competition between foreign and domestic firms. The Commission should also contribute, through open dialogue, to identification of the conditions necessary for the emergence of an international framework for FDI in a manner that avoided costly bidding among countries trying to attract FDI. Finally, the Commission should be the forum where developing countries and countries in transition could discuss with industrialized countries the means to promote effective norms for the liberalization of FDI.

47. The representative of **Germany** agreed with the analysis of country experiences contained in the document "Foreign direct investment in developing countries" (TD/B/ITNC/3). He noted that those developing countries in Asia and Latin America that had been successful in attracting FDI had followed structural adjustment programmes, opened up to trade and FDI, and combined economic growth with price stability. In cases where the development process had neglected social progress, corrective action should be taken, as development should benefit all citizens. He also noted that both FDI and trade were beneficial to host countries and that they were mutually supportive. Not surprisingly, therefore, the largest FDI host countries among developing countries were also leading exporters among those countries. He welcomed the fact that, for most developing countries, growing participation in trade and FDI had become much more important than development aid. In his view, in addition to participation in trade, a decisive issue for the process of development concerned international corporate cooperation; such cooperation went far beyond FDI, which was only one of many forms of such cooperation. Accordingly, the Commission, in dealing with development issues, should gradually shift the focus of its work from TNCs towards issues concerning all companies and various forms of collaboration between them. Finally, he presented Germany's recent experiences with trade and investment, concluding that the intensification of German corporate cooperation and trade with the dynamic developing countries would translate into increased FDI for these countries.

48. The representative of **Namibia** said that, since independence, his country had undertaken many efforts to create an enabling environment for investors, including foreign investors. These efforts included: introduction of a new investment code; creation of an investment promotion centre; promotion of investment through embassies; participation in regional integration schemes; a trade agreement with Zimbabwe to expand the market; introduction of a favourable tax regime, including financial and fiscal incentives for exporting companies; bilateral investment treaties and double taxation agreements; and more recently, establishment of a one-stop agency helping foreign investors and promulgation of export processing zones. More importantly, Namibia had succeeded, through prudent policies, in achieving macroeconomic stability with low inflation, a small budget deficit and sufficient foreign exchange reserves. Nevertheless, FDI, though arriving, was still well below expectations, and Namibia was therefore looking critically at what else should be done to improve its attractiveness as an investment location. Labour

productivity should certainly be increased, and the question of infrastructure must continue to be examined by policy-makers, who were aware of its importance for the investment climate.

49. The representative of the **Islamic Republic of Iran** described to the Commission a number of policy problems relating to the flows of FDI to his country and the region. He welcomed the fact that FDI was no longer a one-way flow and that developing country firms that had a competitive edge and the necessary expertise were increasingly participating in outward FDI. He noted in this context that policy discussions should not be limited to developing countries' experiences and should be extended to the policies of developed host countries which might be discriminatory for developing country enterprises (e.g. in the area of movement of managerial staff) and guided by non-economic considerations. His country, as well as other countries in the region, had established the conditions that were considered necessary to attract FDI. His country had opened its economy to FDI, gave full legal support to foreign investors, and offered a relatively large market and cheap energy. A number of countries in the region had similar and other attributes, but in spite of that the inflows of FDI to the region had traditionally been among the lowest.

50. The representative of **Indonesia** agreed with the secretariat's assessment that FDI was an increasingly important component of the world economy and that FDI had become a more important tool for gaining market access than traditional exports. He presented Indonesia's positive experiences in attracting FDI, which had resulted in a significant increase in the number of approved investment projects and in the value of annual FDI inflows (449 projects and $23.7 billion of approved inflows in 1994 alone). Indonesia was of the view that the key factors in its success in attracting FDI included a good economic climate and social and political stability. Moreover, foreign investors were not offered tax holidays or investment allowances, because these were not considered major factors influencing FDI flows. Fiscal incentives were given to all investors contributing to the development of remote areas. Other important ingredients of the country's good investment climate included convertibility of the currency, a good infrastructure and a stable regulatory environment. A further important factor was regional cooperation and participation with neighbouring countries in the so-called growth triangle, attracting FDI projects with a regional orientation. In conclusion, Indonesia recognized the importance of FDI, considered itself a successful country in attracting FDI so far, and would continue to do so in the future.

51. The representative of **Romania** agreed with the secretariat's analysis of regional trends in FDI but expressed concern that the countries of Central and Eastern Europe had received only 5 per cent of total FDI. He described to the Commission the positive results of his country's economic stabilization programme and the principal features of his country's FDI policies, which aimed at attracting foreign investors. FDI was thus permitted in all sectors and in all forms, including wholly-owned foreign affiliates, profits could be transferred abroad, foreign investors enjoyed full legal protection and were not discriminated against, and the corporate tax rate was relatively low (38 per cent). Foreign investors could also participate in the privatization programme by acquiring stakes in the funds through which privatization was carried out.

52. The representative of **Pakistan** said that the policies of his country were conducive to FDI. They included economic reform, trade liberalization, convertibility of the local currency, privatization (including telecommunications and power generation, the latter with the participation of FDI), deregulation of banking, etc. The economy had responded positively: inflation had been contained at a level no higher than that in Asia, the fiscal deficit had declined, and foreign exchange reserves had increased. He welcomed the more in-depth and expanded analysis of FDI trends in Asia in document TD/B/ITNC/3 and said that the attention given to Asia in the secretariat's work should increase. He also suggested a study by the secretariat on Asian experience in achieving stable capital flows to help policy formulation in developing countries.

53. The representative of **China** described to the Commission the factors which had helped China attract huge FDI inflows, as well as his country's intentions concerning future FDI policies. The contributing factors included economic reform, political and social stability, the considerable progress achieved in introducing laws promoting FDI, and improvements in infrastructure, and all these had led to the establishment of a favourable FDI environment. A characteristic feature that had also contributed to China's success was that three-quarters of its inward FDI came from countries or regions traditionally linked to China by culture and history. At present, uneven geographical distribution and lopsided concentration on certain sectors were still problems to be solved in China's efforts to attract FDI. Priority areas for foreign investors were determined on the basis of China's industrial policy. For example, they currrently included agriculture, energy, transportation, infrastructure and projects with a high technological content or added value. Investments in the central and western areas of the country were encouraged. UNCTAD should continue to play a positive role in providing the forum for countries' exchanges of policy experiences in the area of FDI.

54. The representative of **Algeria**, referring to his country's experiences with the liberalization of FDI policies, said that the country's economy, very centralized only two years before, had since that time achieved considerable progress in terms of reform and greater reliance on the private sector. Liberalization of FDI had been a part of this process. A new investment code had been introduced, a one-stop agency had been established to promote FDI and to follow up on foreign investment projects, and an extensive incentive scheme had been created. Also, the country's economic environment was being adjusted to create the conditions generally available to foreign investors in other countries: steps included WTO membership and participation in various agreements important to foreign investors. So far, liberalization had been much more beneficial to trade than to FDI and imports to Algeria had increased considerably.

55. The representative of **France** made a number of suggestions concerning the future work of the Commission. The Commission should continue as a forum in which countries wishing to do so could share experience and explain their new legislation in the area of FDI. The usefulness of experience-sharing should be increased by the presentation of experiences in a standardized format providing comprehensive information. Country presentations prepared in such a format should be disseminated to other countries and private investors. Industrialists, including industrialists from transition economies who had

invested in developed countries, should be invited to share their experience concerning investment abroad, both positive and negative, with the Commission.

56. The representative of **Belarus** said that her country was interested in attracting FDI as a necessary ingredient for economic reforms. To this end, Belarus had adopted policies designed to make the economy as open as possible to foreign investors. It had signed bilateral investment treaties with 11 countries and a large number of agreements to avoid double taxation, it was preparing to join WTO, and it had concluded a partnership and cooperation agreement with the European Union. Macroeconomic transformation and restructuring were based on a plan agreed with the World Bank. To encourage FDI, guarantees and incentives were offered in the priority sectors. The forms in which foreigners could participate in the Belarus economy ranged from long-term cooperation contracts through joint ventures to wholly-owned companies. So far some 600 foreign companies had registered in Belarus, most of them from Poland, Germany, the United States, Italy and the United Kingdom. They employed some 18,000 persons, not a negligible number in a country with unemployment. Belarus was establishing market-economy institutions such as a stock exchange, private financial-investment companies, etc. The banking industry was expanding fast, but so far there was only one foreign bank. The investment climate in Belarus was therefore favourable, and part of the credit for this must go to the technical assistance received from G-7 countries and international organizations, which had helped in the preparation of the necessary legislation.

57. The representative of **Poland** said that the discussion in the Commission indicated that it would be advisable to organize seminars for developing countries on substantive issues related to a multilateral framework for FDI. Such seminars should be conducted for countries in transition for at least two reasons. Firstly, these countries had only just opened up to FDI, but they lacked the necessary expertise and know-how. Secondly, UNCTAD was, after all, a universal organization and as such should also be interested in the difficulties involved in the transition process of a considerable group of its members. UNCTAD should also be encouraged to provide analytical support to WTO and especially its developing and transitional-economy members in the area of possible future work on FDI. UNCTAD had a proven analytical capability in this area. Interagency cooperation in this area should be encouraged in order to promote more fruitful cooperation in the future. And finally, as FDI issues were becoming important and there was no other universal forum to deal with them, a policy review for interested countries, as proposed by France, was a good idea which should be pursued by the secretariat.

58. The representative of **Italy** said that the model of globalization which was emerging was geographically broad owing to the growing participation of developing countries in FDI as both host and home countries. It was therefore important that liberalization proceed on the basis of agreed and clear game rules. Developed countries should establish ties on these issues with developing countries and countries in transition. The proposal made to organize regional seminars on multilateral investment agreement issues should be supported. Such seminars could also serve as a forum to disseminate information on multinational frameworks and to discuss specific substantive issues related to such frameworks.

59. The representative of the **United States of America** commented on the incongruity of the analysis of privatization programmes in one of the secretariat's papers on regional FDI trends; some of the conclusions on privatizations in the paper on Central and Eastern Europe (TD/B/ITNC/Misc.2) contradicted the more solid arguments, facts and conclusions appearing elsewhere in that paper, as well as in papers on Latin America and Africa. He then advised of his Government's efforts to assist United States firms with trade and investment opportunities in Africa, as described in recent Congressional testimony of the Assistant Secretary of State for African Affairs. He also informed the Commission about the policy actions recommended by United States business to the United States Administration to assist business in expanding trade and FDI in Africa. These recommendations included: expansion of the activities of the Overseas Private Investment Corporation (OPIC) including activities in Africa; conclusion of bilateral investment treaties with African countries; the need to encourage African countries to establish market-oriented integration groupings to increase the size of markets in Africa; the need to convey the message about the importance of policy consistency, stability and transparency; and finally, joint activities with OECD partners to combat illicit payments in internatinal business transactions.

60. In his concluding remarks, the **Chief of the Research and Policy Analysis Branch of the Division on Transnational Corporations and Investment**, commenting on issues raised during the discussion and on suggestions concerning the future work of the secretariat, said that liberalization and globalization - the themes of UNCTAD IX - raised a whole set of new issues which called for a revised, comprehensive approach to development focusing on the effective utilization and coordination of various international economic transactions. TNCs were at the centre of globalization, which was made possible by liberalization, made practical by technology (especially information technology) and driven by intensified competition. The foreign production of TNCs now rivalled trade in terms of bringing goods and services to foreign markets, a situation not existing 20-30 years previously. Furthermore, linkages at the production level led to deep integration among countries, which in turn raised a new set of policy issues. Globalization also raised the issue of the marginalization of a number of developing countries, especially those in Africa, in respect not only of trade but also of FDI. He expressed the secretariat's appreciation to the Government of Japan for providing financial support to its work on FDI by small and medium-size TNCs. In conclusion, he took note of the proposals made by delegations concerning the themes for future analytical work, as well as other work of the secretariat, including: World Investment Directories on FDI and related statistics, especially the directory on Africa; the role of privatization; various substantive issues discussed in connection with an international framework for FDI, e.g. national treatment and regional seminars for developing countries and countries in transition; structures and strategies of TNCs, especially the factors giving TNCs a competitive edge; sectoral analysis, especially the growth of FDI in services in developing countries; TNCs and FDI from developing countries; round-tripping of domestic capital for FDI; access to markets and the contestability of markets; recent trends in FDI and domestic investment, especially in developing countries - analytical note to be published at the beginning of each year; FDI in countries in transition; investment incentives - their costs and benefits, the impact of financial incentives, and increasing transparency of incentives; cooperation with other

institutions, especially IMF, OECD and EUROSTAT, as regards statistics and their standardization; the interrelationship between trade and FDI in the context of globalization; the experience of Asia in attracting stable private capital inflows, including FDI; country presentations of FDI policies - work on a uniform format for presentations.

B. Informal panel discussions

61. In the course of the Commission's session, four informal panel discussions were organized on the following topics: the international framework for foreign direct investment; recent developments in international investments and transnational corporations; incentives and foreign direct investment; and the FDI impact on the Mexican crisis. (For brief summaries of the panellists' presentations, see annex II).

Chapter II

IMPLEMENTATION OF THE PROGRAMME ON INTERNATIONAL INVESTMENT AND TRANSNATIONAL CORPORATIONS

(Agenda item 5)

62. For its consideration of this item, the Commission had before it the following documentation:

"Experiences gained in technical cooperation activities relating to the commercialization of science and technology" - Report by the UNCTAD secretariat (TD/B/ITNC/4);

"Report of the Working Group of Experts on International Standards of Accounting and Reporting on its thirteenth session" (TD/B/ITNC/5-TD/B/ITNC/AC.1/6);

"Activities of the programme on international investment and transnational corporations" (TD/B/ITNC/Misc.3).

A. Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting

63. Mr. Nelson Carvalho (Brazil), **Chairman of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) at its thirteenth session**, presented the report of the Group (TD/B/ITNC/5-TD/B/ITNC/AC.1/6). He commented that foreign investment and transnational corporations played a significant role in the development of countries within his geographic region and noted that investors and recipients were partners in economic growth. With regard to the Intergovernmental Group's session, the main theme had been environmental accounting, and the Group had recognized the need for the continuation of research on this topic and had concluded that future work should consider the broad objectives, goals and concepts of environmental accounting. A one-day forum on the responsibilities and liabilities of accountants and auditors had also been held during the session. Given that financial markets placed great reliance upon audited financial statements and legal proceedings against accounting firms, the importance of the transparency of issues surrounding that topic was magnified.

64. He noted that the work of other international accounting organizations complemented that of ISAR and emphasized that ISAR endeavoured to cooperate with these organizations. He urged member States to support the substantive work of ISAR and to help ensure the greatest possible global representation at its meetings. Finally, he drew attention to draft resolution V in document E/C.10/1994/12, which the Commission was requested to consider.

65. The representative of the **Netherlands** stated that her country felt that any work in the area of the accreditation of accountancy qualifications should concentrate on management and financial accountants and not professional auditors to avoid overlap of activities with the World Trade Organization.

66. The representative of **Pakistan** praised the work of ISAR on environmental accounting, which would help incorporate environmental considerations into

economic decision-making. In addition, he commended the work of the Group on disclosures regarding derivatives and praised the involvement of the private sector in the work of ISAR as a model that could be applied elsewhere in UNCTAD's work.

67. The representative of the **United States of America** said that his country did not support the previously mentioned draft resolution V, nor the development of global standards for environmental accounting by ISAR. He suggested that the future orientations of ISAR should be considered during UNCTAD IX. Lastly, he praised the technical assistance activities of the Group.

Action by the Commission

68. The Commission postponed its consideration of draft resolution V until its next session. It took note of the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its thirteenth session, along with the reservations expressed by the Netherlands and the United States.

B. Technical advisory activities and programme implementation

69. The **Director-in-charge of the Division on Transnational Corporations and Investment** made an oral report on the activities of the Division in the four main areas of its work: research and policy analysis; advisory service for investment and technology; accounting and information; and privatization. Based on the background documentation provided by the secretariat (TD/B/ITNC/Misc.3), he stressed that the past year had seen not only a consolidation of the programme on transnational corporations, but also a considerable reduction in output throughout the activities of the Division due to a considerable decline in the regular-budget and extrabudgetary resources of the programme. He emphasized that the declining trend was likely to continue in 1995, as the resource situation was increasingly impinging on the Division's ability to carry out its tasks. He expressed his gratitude to the Governments of China, Denmark, the Republic of Korea, Namibia, Norway and Switzerland for their contributions to the Trust Fund and the Governments of Austria, Belgium and Denmark for providing associate experts to the programme. He also thanked the Government of Japan for its pledge made during the Commission's session to support the work of the Division on small- and medium-sized enterprises.

70. The **Chief of the Advisory Service for Investment and Technology**, introducing document TD/B/ITNC/4, said that the experience gained in assisting the economies in transition in their reform process showed the benefits to be drawn from the commercialization of their science and technology capacities via business alliances with transnational corporations. Scientific products were routinely patented before they were marketed, and licensing contracts normally captured the full potential value of the scientific product, but this was often not the case in the economies in transition due to lack of knowledge of international standards and insufficient skill in contract negotiation. Technical cooperation extended in this area included training and advisory assistance in intellectual property protection, marketing, strategic planning, negotiation, cost accounting, finance and other subjects relevant to market

economies. The countries that had been involved so far in this programme included Belarus, Estonia, Kazakhstan, Latvia, Lithuania, Ukraine and Uzbekistan.

71. The representative of the **Netherlands** pointed to discrepancies in the tables on training activities in document TD/B/ITNC/Misc.3 (table 3 and annex table 3) and requested clarification. She also said that the document should provide a clear overview of resources spent under each activity and requested that such information be included in future reports. With reference to document TD/B/ITNC/4, she said that the main focus of technical assistance activities should be on developing countries, in particular the least developed countries, and not on economies in transition.

72. The representative of **China** commended the research, advisory and information dissemination work of the Division and expressed his concern about the shortfall in resources. Recalling the several technical assistance projects conducted by the Division in China in 1994, he thanked the Division and the donors who had contributed to these programmes.

73. The representative of **Switzerland** praised the high quality of the analytical work of the Division. With regard to its technical assistance work, he requested a more thorough statement on the range of activities, as well as a detailed account of the assistance provided. Given increasing budget restrictions, more transparency in accounting for resources received and spent would be required, and future Swiss contributions to the Trust Fund on Transnational Corporations would depend crucially on increased transparency in this regard. With reference to document TD/B/ITNC/4, he acclaimed the project presented as very well suited to economies in transition but lacking, in its present form, applicability to developing countries, which should be the main focus of the Division's technical advisory work.

74. The representative of **Colombia** expressed concern about the scaling-down of activities, in particular technical-assistance-related activities, because of budgetary constraints and strongly supported the appeals by the secretariat for donations to the Trust Fund. She supported the requests of other member States with regard to the need for greater clarity in accounting and requested an explanation for the slow progress in re-establishing the FDI database in Geneva. With regard to technical assistance, she expressed concern over the fact that transitional economies seemed to be given more attention than developing countries. She also regretted the few training activities implemented in 1994 and, in light of the growing demand in developing countries for training in the field of privatization and the regulatory framework, called for an expansion of the activities of the programme in this regard.

75. The representative of **Lebanon** voiced his country's appreciation of the advisory and technical assistance work implemented by the Division in his country and expressed his hopes that further resources, including human resources, would be made available to the programme.

76. The representative of **Algeria**, praising the quality of the work and documentation prepared by the Division, expressed concern about the drying-up of resources and the slowing-down of crucial technical assistance activities. He called for a reactivation of the activities of the Division.

77. The representative of the **Russian Federation** thanked the Division for its work and with respect to technical assistance stressed the importance of strengthening and promoting an enabling investment climate, including private sector development, and the need to comply with the principle of universality in providing technical assistance, so that transitional economies would be included. He expressed satisfaction with the technical assistance projects carried out in the Russian Federation in 1994 and hoped for continued cooperation between Russia, UNCTAD and UNDP in this regard.

78. The representative of **Namibia** said that the African countries' relative decline in attractiveness to FDI and their increasing marginalization called for concrete action on the part of the Commission and the international community. UNCTAD IX should put this issue at the top of its agenda, and regional seminars should be organized in Africa on the issue of promoting foreign direct investment.

79. The representative of **France** congratulated the secretariat for document TD/B/ITNC/4 and welcomed the specific nature of the study of countries mentioned therein. He invited the secretariat to extend the study to countries other than transitional economies so as to allow for a balanced approach and preserve the universal nature of UNCTAD. Work on this issue should also take into account the recommendations of the Ad Hoc Working Group on Comparative Experiences with Privatization, as well as the recommendations of the Ad Hoc Working Group on the Interrelationship between Investment and Technology Transfer.

80. The representative of **Japan** expressed his Government's high esteem for the programme's research and technical advisory activities. He said that his Government would be providing financial support for the project on "Technical cooperation among developing countries to expand and strengthen the role of foreign direct investment by small and medium-sized enterprises in developing countries of Asia" and expressed his hope that the seminars organized under this project would attract as many private investors as possible.

81. The representative of **Ethiopia** emphasized his country's progress in establishing an enabling investment climate and thanked UNCTAD and the Government of Italy for organizing a policy seminar on privatization which had been held in Addis Ababa and which had greatly assisted Ethiopia in its efforts to implement its privatization programme.

82. The representative of the **United States of America** stressed the need for greater transparency and accountability in the technical assistance area. In addition, he asked for more detailed information on the kind of assistance provided to member States in the form of a summary of recommendations. In this regard, he expressed his concern about the advice given by the secretariat on the issue of investment screening. He recommended closer contact and interaction with the business community in the technical assistance work of the Division. He agreed with Namibia on the need to focus on Africa, but in light of the existing resource constraints, he advised against organizing regional seminars in Africa. Rather, the question of FDI in Africa should become an important issue for UNCTAD IX, which, if the Conference was hosted by an African country, would lend further impetus to the issue.

83. The representative of **France** pointed out that UNCTAD IX should provide an opportunity to review the needs of Africa with respect to foreign direct investment.

84. The representative of **Germany**, referring to TD/B/ITNC/Misc.3, requested more detailed information on how resources were allocated among the four main areas of activity of the Division. With regard to accounting and reporting, he endorsed the work on environmental accounting but cautioned against the establishment of a subgroup of ISAR on this issue, in particular if it required additional resources.

85. The **Director-in-charge of the Division**, responding to the comments made, emphasized that the report on technical assistance activities in 1994 reflected but a fraction of the work of the Advisory Service for Investment and Technology and that its work in the transition economies would not be at the expense of the developing countries. With regard to the request for greater transparency in terms of expenditures, he stressed that a response would be prepared. On the matter of increased technical assistance to Africa, he pointed to the involvement of the Division in the forthcoming investment conference in Africa to be held in late 1995 and encouraged an examination of how this issue could be pursued at UNCTAD IX. With respect to the FDI data base, he gave an explanation of the difficulties arising in connection with its re-establishment. Concerning the involvement of the private sector in the technical assistance work of the Division, that involvement was in fact already well established. On the matter of ISAR convening a meeting of experts on environmental accounting, he clarified that this would have no budgetary repercussions or financial implications, and with regard to the discrepancy in the tables in document TD/B/ITNC/Misc.3, he said clarification would be provided.

Chapter III

PROCEEDINGS OF THE CLOSING PLENARY

A. Recent developments in international investment and transnational corporations; country and regional experiences in attracting foreign direct investment for development; implementation of the programme on international investment and transnational corporations

(Agenda items 3-5)

86. At its closing plenary, on 28 April 1995, the Commission adopted its draft agreed conclusions on agenda items 3, 4 and 5 (TD/B/ITNC/L.2). (For the text of its agreed conclusions, see annex I.)

87. The representative of the **International Confederation of Free Trade Unions** said that ICFTU expected the Commission, in examining the issues referred to in paragraph 1 of its agreed conclusions, to seek the contribution and participation not only of the private sector but also of the trade unions, in conformity with the terms of reference of the Commission.

B. Other business

(Agenda item 7)

88. Mr. Arvind Mayaram, Managing Director, Bureau of Industrial Promotion, Rajastan, India, reporting on the High-level Meeting of Investment Promotion Agencies that had been held in parallel with the Commission's session, said that most countries were now promoting FDI as one of the most significant tools of economic development, and the High-level Meeting had been attended by investment promotion agencies from 60 countries. In addition to country experiences, the Meeting had discussed the establishment of a world association of IPAs, and a general consensus had emerged that such an association would benefit all IPAs, including those from the least developed countries. In order to prepare a framework for such an association, it had been decided to set up a working group, the outcome of whose work would be submitted to the IPAs for ratification. The main objectives of a world association could be: to promote and develop understanding and cooperation among IPAs; to strengthen information-gathering systems and information exchange amongst IPAs; to share country and regional experiences in attracting investment; to assist IPAs to gain access to technical assistance and training through referrals to relevant agencies; to facilitate access to funding and other assistance, through referrals to relevant bilateral and multilateral agencies, for the development and implementation of investment promotion programmes. Finally, the Meeting had felt that, to the extent possible, a close nexus should be maintained between IPAs and the Commission.

89. The Commission took note of the statement on the High-level Meeting and of the information provided.

Chapter IV

ORGANIZATIONAL MATTERS

A. Opening of the session

90. The twenty-first session of the Commission on International Investment and Transnational Corporations was opened on 24 April 1995 at the Palais des Nations, Geneva, by Mr. C. Fortin, Officer-in-charge of UNCTAD.

B. Rules of procedure

91. The Commission was informed that, pursuant to General Assembly resolution 49/130 of 19 December 1994 and Board decision 425 (XLI) of 31 March 1995, the Commission, as a subsidiary body of the Trade and Development Board, would apply the rules of procedure of the main committees of the Trade and Development Board. Furthermore, as a general rule applicable to all UNCTAD intergovernmental bodies unless otherwise stated, the Commission would have open-ended membership, and intergovernmental and non-governmental organizations in status with UNCTAD would be entitled to participate as observers.

C. Election of officers

(Agenda item 1)

92. At the first plenary meeting of its twenty-first session, the Commission elected its officers, as follows:

Chairman:	Ms. L. Bautista (Philippines)
Vice-Chairmen:	Mr. Y. Afanassiev (Russian Federation)
	Mr. I. Kinnas (Greece)
	Mr. P. Sinyinza (Zambia)
	Mr. A. Ghafoor (Pakistan)
	Ms. M.F. Arias (Colombia)
Rapporteur:	Mr. W. Haynes (United States of America)

D. Adoption of the agenda and organization of work

(Agenda item 2)

93. Also at the first plenary meeting of its twenty-first session, the Commission adopted the provisional agenda for the session (TD/B/ITNC/1). The agenda was thus as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. Recent developments in international investment and transnational corporations

4. Country and regional experiences in attracting foreign direct investment for development

5. Implementation of the programme on international investment and transnational corporations

6. Provisional agenda for the twenty-second session of the Commission

7. Other business

8. Adoption of the report of the Commission.

94. The Commission was informed that a High-level Meeting of Investment Promotion Agencies would be taking place on 25, 26 and 27 April in parallel with the meetings of the Commission.

E. Provisional agenda for the twenty-second session of the Commission

(Agenda item 6)

95. At the closing plenary of its twenty-first session, the Commission approved the draft provisional agenda for its twenty-second session (TD/B/ITNC/L.3). (For the text of the provisional agenda, see annex III.)

F. Adoption of the report of the Commission

(Agenda item 8)

96. Also at the closing plenary, the Commission adopted its draft report (TD/B/ITNC/L.2 and Add.1-3) and authorized the Rapporteur to complete the final text in the light of the proceedings of the closing plenary.

Annex I

AGREED CONCLUSIONS

1. The Commission will continue to review recent developments in the areas of investment, resource mobilization, particularly savings and the interlinkages among foreign direct investment, trade, competition, technology and other international transactions. In the context of specific topics in these areas, it will seek the active participation of the private sector.

2. The Commission has noted the relatively low levels of both foreign and domestic investment in Africa. The members of the Commission fully recognize the role of investment for development, with special attention to Africa, with a view to improving the climate for investment, support international activities aimed at increasing foreign direct investment flows and encourage such activities to be organized in conjunction with UNCTAD IX.

3. The Commission stands prepared to undertake policy reviews of members which so desire. Such reviews would be an occasion to familiarize other governments and the private sector with an individual country's investment environment and policies. They should be undertaken on the basis of a common format and, in an appropriate manner, include inputs from the private sector and non-governmental experts.

4. The Commission will deepen its analysis of incentives and their costs and benefits as part of the overall investment climate, as well as patterns of investment, and requests the secretariat to undertake the necessary analytical work. It also requests the secretariat to explore the possibility of preparing pilot presentations of information on incentives for a small number of countries that wish to participate.

5. The Commission encourages continuing exchanges of information on issues of interest to members, including on the evolution of intergovernmental discussions pertaining to investment issues.

6. Considering that the Commission is the appropriate forum for the discussion of the World Investment Report, it requests the Board to explore the possibility of making the report available in time for the session of the Commission in the official languages of the United Nations. The Commission further encourages the widest possible dissemination of the Report.

Annex II

SUMMARIES OF INFORMAL PANEL PRESENTATIONS

Panel on international frameworks for foreign direct investment

1. The purpose of this panel was to inform the Commission on developments in discussions or negotiations elsewhere on international frameworks for foreign direct investment. The instruments discussed were the APEC Non-binding Investment Principles; the ongoing work at OECD to develop a Multilateral Investment Agreement; and the Uruguay Round Agreements relating to foreign direct investment.

2. Mr. R.P. Napitupulu, Deputy Chairman for Planning, Investment Coordination Board of Indonesia, spoke about the APEC Non-binding Investment Principles which had been endorsed in December 1994. The set of Principles included provisions on transparency, non-discrimination between source economies, national treatment, investment incentives, performance requirements, expropriation and compensation, repatriation of funds, settlement of disputes, entry and sojourn of personnel, avoidance of double taxation, investor behaviour and removal of barriers to capital exports. The 1995 APEC Ministerial Meeting would discuss further how these principles could be implemented in order to achieve the goal of free and open investment in the region, including the preparation of a plan of action.

3. Mr. Geiger, Deputy Director for Financial, Fiscal and Enterprise Affairs of OECD, explained that negotiations on a Multilateral Investment Agreement were likely to be launched at the 1995 Ministerial Meeting. This initiative responded to a feeling on the part of many countries that the existing international legal framework for foreign direct investment was inadequate to deal with the exponential growth in FDI in recent decades and with the increasing importance of transnational corporations in a globalized economy. While there were many agreements and instruments dealing with FDI, they did not amount, even together, to a cohesive, comprehensive and multilateral framework for FDI. OECD, explained Mr. Geiger, seemed the appropriate forum for these negotiations, because it could build on OECD achievements (including the Codes of Liberalization and the Declaration on International Investment and Multinational Enterprises, among others). He said there was a need for new disciplines in the investment area, particularly on privatization and restrictive business practices, provisions engaging subnational authorities, and settlement of disputes. Consequently, it seemed that an instrument of foreign direct investment encompassing the more advanced norms presently envisaged in the area of liberalization, protection and settlement of disputes and assuring a balance of commitments would gather the necessary political support. The key elements of such a framework were: liberalization obligations (including national treatment before establishment, non-discrimination and procedures to advance further liberalization); protection obligations, including general and specific norms for the treatment of foreign investors, such as guarantees on expropriation and transfer of funds; a mechanism for the settlement of disputes, including differences between States and private investors from other States; and the possibility of accession by non-OECD member countries. Thus, while the agreement was to be negotiated among OECD countries only, it would be open to accession by non-member countries able to meet the obligations of the agreement. Moreover,

he noted there was an ongoing process of consultations with non-member countries to ensure that the views and concerns of these countries were fully taken into account in the negotiation process. To that end, Mr. Geiger advised that OECD was also looking to strengthen cooperation and develop synergies with other international agencies also dealing with FDI, such as WTO, the World Bank and UNCTAD.

4. Mr. Adrian Otten, Director of the Intellectual Property and Investment Division of the World Trade Organization, noted that WTO was gradually evolving rules in the area of FDI. The Uruguay Round Agreements contained a number of instruments directly related to FDI aimed at improving the investment climate around the world, as they liberalized access to markets and opened up new possibilities for FDI. The most important agreements relevant for FDI were the Agreement on Trade-related Investment Measures, the General Agreement on Trade in Services, the Agreement on Trade-related Aspects of Intellectual Property Rights, the Agreement on Government Procurement, and the Subsidies Agreement. Concerning expansion of negotiations on FDI issues, the policy question was not whether it would take place but when. There were commitments written into some of the new agreements dealing with FDI to review the existing rules within five years of WTO entering into force.

5. Professor John Kline from Georgetown University perceived at least three purposes for building up the international framework for foreign direct investment: to expand consensus on or country coverage of existing investment principles; to break new policy ground on new investment-related issues; and to lock in and prevent back-sliding on recent liberalizations, many undertaken unilaterally. A patchwork approach to the construction of an international framework for FDI based on existing building blocks was not undesirable. In the field of international investment, it was not yet known what type of structure or pattern was needed. The subject itself was still evolving, and definitions were changing as enterprises used more types of low-equity or non-equity investments and forged diverse international corporate alliances. The number of transnational enterprises had grown exponentially, while firms' characteristics had become more diverse. Thus the best approach for now might be an inclusive and non-hierarchical one, drawing on experience and expertise and perspectives from many institutions (OECD, WTO, APEC, NAFTA, UNCTAD, World Bank).

Panel on recent developments in international investments and transnational corporations

6. Ms. S. Ostry, Chairperson, Centre for International Studies, University of Toronto, said that foreign direct investment had given rise to deeper integration. Following the FDI recession of 1991 and 1992, the recovery had been characterized by an emphasis on FDI flows to East Asia, and some developing countries had become significant home countries. The period since the Second World War had been characterized by three phases in the evolution of the international economy and associated institutional frameworks. The first phase had consisted of the successful attempt to reduce barriers to trade between countries through the General Agreement on Tariffs and Trade. The second phase had consisted of the liberalization and reform of the international financial system in the 1970s, partially in response to the significant impact of petro-dollar movements upon Western financial and currency markets. The third phase in the evolution of the global economy

towards deeper integration consisted in the enormous increases in FDI flows and stocks beginning in the mid-1980s. This increase had been propelled by increased global competition, the revolution in information technologies and growth in high-technology and services industries. The essence of the third phase had been the ubiquitousness of TNCs, which had served as vehicles for trade, foreign direct investment, and two-way flows of technology. Strategic alliances had also constituted an important feature of the third phase due to the growing costs and risks associated with research and development combined with the imperative for continued innovation for TNCs to maintain market share in an increasingly competitive global economy. This gave rise to the issue of the potential marginalization of smaller countries resulting from their limited "strategic partnering capabilities" in TNC research and development alliances.

7. Deep integration had had profound policy implications, and the World Trade Organization constituted an important new beginning for the continuation of a rules-based multilateral system. Progress in reforming IMF and the World Bank would also be important.

8. One of the central features of the third phase was the intrusiveness of deeper integration into spheres traditionally considered as residing in the "domestic" domain and closely associated with issues of national sovereignty.

9. To date, regional and bilateral forums had been the most active loci for attempts to resolve these issues. However, if a multilateral, rules-based system was to be maintained, it would ultimately have to be WTO where these issues should be resolved. However, she added that UNCTAD would be well suited to serving as a source of analytical support for WTO, given its expertise in investment issues and its wider membership.

10. With regard to the apparent marginalization of Africa, that problem could relate to the marginalization effect of deeper integration, associated with weak "strategic partnering capabilities". Finally, product-cycle-type characterizations of international patterns of production seemed inappropriate within the context of deep integration, and the East Asian experience highlighted the need for a perspective based upon the concept of the "production-system cycle" instead.

Panel on incentives and foreign direct investment

11. The panel discussed the pros and cons of offering incentives to foreign investors and the related question of competition among countries in offering incentives to attract FDI.

12. Mr. Trevor Nuttal from Arthur Andersen noted a growth in FDI incentives. More incentives were now aimed at attracting FDI which could provide employment, encourage technology transfer and promote exports. There was also a clear move towards granting discretionary incentives. He cited a number of examples of major investments which had received incentives. However, in all these cases, the incentives, big as they might have been, were not the key factor in deciding the location of the FDI project between the competing countries. There was also the question of bidding between regions witnin a country, and even within cities. It was clear from the foregoing that there was a need to increase cooperation at the national and international levels.

Of particular importance was cooperation in the collection of data, as well as the need to increase transparency on eligibility conditions and to set ceilings on the amounts of incentives. The experience on the latter was positive, as in general most incentives within the European Community stayed well within the ceilings established by the European Commission.

13. Mr. J. Jegathesan, Deputy Director General of the Malaysian Industrial Development Authority, noted two different types of incentives: front-end financial incentives, which were given mostly by developed countries, and rear-end incentives, given mainly by developing countries. Countries offered incentives because every country was offering them. However, for an investor, incentives were the icing on the cake; the stronger the other policy conditions, the lesser the need to give incentives. A third compulsion was the tendency for developed countries to give incentives to prevent FDI from going out. There was a need to increase transparency, and to know more about what other countries were doing. An international convention on transparency in FDI incentives could be pursued within the United Nations.

14. Professor Donald Lecraw, from the Western Business School of the University of Western Ontario in Canada, explained that incentives were justified to cover the wedge between social and private rates of return for FDI projects which provided externalities to the local economy and thereby correct market distortions. In developed countries, where wages were high, incentives helped to maintain skilled employment. The problem was that, to get FDI and jobs, Governments sometimes had to pay more than was socially desirable. There were also political factors involved. With incentives given across the board, a main problem was subsidizing FDI that would have been made anyway. Steps to control the rise in FDI incentives included increased efforts to gather information, to improve transparency, and to improve upon the comparability of data on incentives.

Panel on the FDI impact of the Mexican crisis

15. This panel discussed the impact of the financial crisis on foreign direct investment in Mexico and on the behaviour of transnational corporations, and it drew lessons on the linkages between FDI and other forms of capital inflow, as well as implications for FDI as a form of capital inflow relative to other forms of capital flows.

16. Mr. Benito Bucay, a private industry consultant in Mexico and Chairman of the Mexican Foundation for Total Quality, observed that FDI, like any other kind of investment, was dependent upon a reasonably stable growth path of well spread prosperity. The economic reforms which Mexico had implemented since 1987 had attracted large inflows of FDI, peaking at $8 billion in 1994. However, this figure, though large, did not compensate for the $20 billion in outflows of portfolio investment. Investors normally assumed that direct investment was relatively independent of other kinds of foreign investment flows, but the recent financial crisis had impacted adversely on equity investment: FDI in 1995 was likely to be less than half that in 1994. Nevertheless, there was no reason why those levels of inflows could not be attained in future years, as the economic fundamentals were sound and the access that NAFTA provided to the North American market remained a major magnet for transnational corporations.

17. One reason that the current financial crisis had been unanticipated was that the growing deficit on the current account due to rising imports had been seen as sustainable and a necessary counterpart to an excess in the capital account due to massive portfolio inflows. The health of the economy had not been doubted; however, in a few months the conventional wisdom had been reversed: capital inflows were now seen as having been poorly utilized on living expenses and on changing the production structure into one increasingly dependent on imports. The capacity to export was also reaching the limit, so that the current deficit would continue to expand as long as foreign capital remained available. Greater emphasis needed to be placed on the development of small- and medium-sized enterprises in the future to provide productive jobs for the large and growing labour force.

18. Mr. Kurt Unger Rubin, a researcher at the Economic Research Centre (Centro de Investigacion y Docencias Economicas) in Mexico, said that one consequence of the financial crisis was a change in the market orientation of firms in favour of exports as opposed to domestic consumers, who were cutting back on unnecessary consumption. The change was most immediate for industries and firms that were already well linked to export markets: these were industries dominated by TNCs such as automobiles, electronic equipment, chemicals (partly) and some services (tourism), as well as industries predominantly in the hands of national firms such as petrochemicals (plastics, steel, textiles and farm products). Most domestic companies were not able to switch from domestic production to exports without support measures to encourage innovation and productivity. There was thus a role for the State in the area of industrial policy, a role which was indispensable and complemented privatization and deregulation in an open economy.

19. Following the presentations by the experts, there was a full and wide-ranging discussion of the lessons to be drawn from the experience of Mexico for other countries as regards the interaction between different kinds of foreign investment and their impact on development.

Annex III

PROVISIONAL AGENDA FOR THE TWENTY-SECOND SESSION OF THE COMMISSION

1. Election of officers

2. Adoption of the agenda and organization of work

3. Recent developments in international investment and transnational corporations, including the role of incentives for foreign direct investment within the context of the overall investment climate

4. Policy review of countries desiring such a review

5. Implementation of the programme on international investment and transnational corporations

6. Provisional agenda for the twenty-third session of the Commission

7. Other business

8. Adoption of the report of the Commission to the Trade and Development Board.

Annex IV

ATTENDANCE 1/

1. The following States members of UNCTAD, members of the Commission, were represented at the session:

Algeria
Argentina
Austria
Bolivia
Brazil
Bulgaria
Canada
China
Colombia
Costa Rica
Cyprus
Czech Republic
Democratic People's Republic of Korea
Denmark
Ecuador
Egypt
Ethiopia
Finland
France
Germany
Ghana
Greece
Honduras
Hungary
Iceland
India
Indonesia
Iran (Islamic Republic of)
Iraq
Italy
Jamaica
Japan
Jordan
Kenya
Lebanon
Madagascar
Malaysia
Mexico
Mongolia
Morocco
Namibia
Nepal
Netherlands
Oman
Pakistan
Paraguay
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Russian Federation
Slovakia
South Africa
Spain
Sri Lanka
Sudan
Swaziland
Sweden
Switzerland
Thailand
The Former Yugoslav Republic of Macedonia
Trinidad and Tobago
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Vanuatu
Venezuela
Viet Nam
Zambia

1/ For the list of participants, see TD/B/ITNC/INF.1.

2. The following economic commissions were represented at the session:

Economic Commission for Europe
Economic and Social Commission for Asia and the Pacific
Economic Commission for Africa
Economic and Social Commission for Western Asia.

3. The following specialized and related agencies were represented at the session:

International Labour Organization
International Monetary Fund
United Nations Industrial Development Organization.

The World Trade Organization was also represented at the session.

4. The following intergovernmental organizations were represented at the session:

African, Caribbean and Pacific Group of States
European Community
European Free Trade Association
Organization for Economic Cooperation and Development
Organization of African Unity.

5. The following non-governmental organizations were represented at the session:

General category

International Bar Association
International Chamber of Commerce
International Confederation of Free Trade Unions
International Organizations of Employers
International Youth and Student Movement for the United Nations
World Confederation of Labour
World Federation of United Nations Associations

Special category

Consumers International.

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